

Quarterly Report
OF THE
ATTORNEY GENERAL
OF
ALABAMA



FOR THE PERIOD
FROM APRIL 1, 1968
THROUGH JUNE 30, 1968
VOLUME 131

MacDONALD GALLION, Attorney General

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QUARTERLY REPORT

of the

ATTORNEY GENERAL

of

A L A B A M A

For the Period

From April 1, 1968

Through June 30, 1968

**TO THE STATE, COUNTY, AND MUNICIPAL OFFICERS OF
ALABAMA:**

This Quarterly Report of the Attorney General of Alabama, which includes all official opinions rendered by the Attorney General from April 1, 1968 through June 30, 1968, is published in compliance with the provisions of Title 55, Section 228, Code of Alabama 1940.

Under this section of the Code, I am required to send seven copies of this Quarterly Report to each judge of probate in the State and the judge of probate, in turn, is required to deliver one copy each to the clerk of the circuit court, the sheriff, the tax collector, the tax assessor, the county superintendent of education, and the deputy or county solicitor of his county. This section also requires that I send a copy of this report to each circuit solicitor and the chief executive officer of each incorporated municipality in the State.

The office of the Attorney General is anxious to render prompt and efficient service to the State, county, and municipal officials. If you have any suggestions to make regarding the improvement of the service, I shall be glad to hear from you.

Sincerely,

MacDONALD GALLION
Attorney General

MacDONALD GALLION
Attorney General

R. Hunter Phillips
Executive Assistant

John G. Bookout
Deputy Attorney General

Assistant Attorneys General

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Edward H. Brogden
Mrs. Julia H. Griswold
George Hodges
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Willard W. Livingston
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William H. Burton
B. Frank Loeb
James R. Payne

Pensions and Security:

Mrs. Mary Lee Stapp
Mrs. Carol F. Miller

Conservation:

William G. O'Rear
John D. Bonham

Examiners of Accounts:

James W. Webb

Finance:

James T. Hardin

Agriculture and Industries:

George O. Miller

Mental Health:

Jamie L. Pettigrew

OPINIONS

April 4, 1968

Honorable J. Gilmer Blackburn

Mayor

City of Decatur

Decatur, Alabama 35601

Appropriations — Hospitals — Municipalities — Mental Health.

A municipality may appropriate funds, convey property and furnish utility service to a mental health facility owned by the State or an agency thereof.

Opinion by Assistant Attorney General Gish.

Dear Sir:

Your request for an official opinion dated February 13, 1968, is as follows:

"The State of Alabama proposes to build and maintain in Morgan County, Alabama, outside the corporate limits of the City of Decatur, a hospital for the treatment and care of the mentally retarded. The City of Decatur desires to contribute \$50,000.00, either in cash, or by way of services and property, and possibly other funds, services and property from time to time to such hospital, provided such constitutes a legal expenditure of the municipal funds of the City of Decatur.

"Accordingly, in behalf of the Board of Commissioners of the City of Decatur, and all others having responsibility in the handling and expenditure of municipal funds, your official opinion is requested as to whether or not contributions of the municipal funds, services and property (acquired or to be acquired) to the State of Alabama, or to said hospital or its operating board or agency, constitute legal expenditures and uses of municipal funds, property and services."

I am informed that the term "services" as used in your request means municipal owned utilities, such as water and sewer services.

The mental health hospital facility or center to which your request refers will be constructed by the State of Alabama or an agency thereof under the provisions of an amendment to the Constitution of Alabama 1901, ratified by the voters on December 5, 1967, and the enabling act thereto, which is Act No. 276, Acts of Alabama 1967, approved September 1, 1967.

In an opinion rendered by this office to Honorable Ira H. Weisinger, Judge of Probate, Lee County, under date of March 3, 1960, (not reported) we held that Title 22, Section 190, Code of Alabama 1940,

authorizes counties and municipalities to make appropriations to mental health clinics incorporated under the Alabama Non-Profit Corporation Act, Act No. 578, Acts of Alabama 1955, page 1254. See Quarterly Report of Attorney General, Volume 126, page 24.

In a letter written to Honorable Guy D. Roberts, Chairman, Board of Revenue and Control, Morgan County, dated December 11, 1967, we held that Morgan County may purchase property in said County and convey the same to the proper State agency to be used for the construction thereon of a State mental hospital facility or center authorized to be constructed under the provisions of the amendment to the State Constitution mentioned hereinabove and Act No. 276, supra.

Based upon the above cited authorities, I am of the opinion that the City of Decatur may make the appropriations contemplated by your request and may furnish property and municipal utility services to the mental health facility or center here considered. Cf. Quarterly Reports of Attorney General, Volume 117, page 29, Volume 123, page 21, and Volume 128, page 47.

Very truly yours,

MacDONALD GALLION
Attorney General

April 8, 1968

General Walter E. Todd
Administrator

ABC Board
State Capitol
Montgomery, Alabama

ABC Board — Profits — Municipal Corporations —
Census.

1. In the distribution of profits to municipal corporations as provided for by Title 29, Section 71(1), Code of Alabama 1940, any special census taken under the provisions of Act No. 845, Regular Session of the 1953 Legislature, should be used as the basis of such distribution and not the last Federal Decennial Census.
2. The opinion appearing in Quarterly Report of Attorney General, Volume 118, Page 21, is hereby overruled and withdrawn.

Opinion by Attorney General MacDonald Gallion.

Dear General Todd:

Your request for an official opinion bearing date of March 28, 1968, is as follows:

"Some question has arisen as to the correctness of the opinion of the Attorney General appearing in Quarterly Report of Attorney General, Vol. 118, page 21, which holds that in distributing the profits to municipalities as provided for by Title 29, Section 71(1), the 1960 Federal Decennial Census should be used as a basis for distributions and not a census taken under the the provisions of Act No. 845, Regular Session of the Legislature 1953.

"In view of the importance of this question to the ABC Board and the various municipalities over the State, I respectfully request that you review the opinion heretofore rendered on this question."

As requested by you, I have reviewed the opinion rendered to Honorable James E. Caldwell, Administrator, Alabama Alcoholic Beverage Control Board, under date of February 18, 1965, appearing in Quarterly Report of Attorney General, Volume 118, Page 21, and in my judgment this opinion does not properly state the law as it exists at this time and should be overruled. I am overruling this opinion after a thorough review of former opinions of this office and, in particular, the opinion rendered to Honorable J. T. McLaughlin, Mayor, City of Fairfield, under date of December 4, 1953, and appearing in Quarterly Report of Attorney General, Volume 73, Page 66.

The opinion rendered to Mr. Caldwell was based on the proposition of law that Section 71(1) of Title 29, Code of Alabama 1940, wherein it was provided the last Federal Decennial Census should be used as a basis for the distribution, was a specific provision relating to a specific subject and, therefore, governed over the general provision relating to the general subject, the general provision being Act No. 845 of the Regular Session of the 1953 Legislature.

In my judgment, the application of statutory construction used in the Caldwell opinion overlooked the fact that Act No. 845, *supra*, in Section 4 thereof, repealed all laws or parts of laws which conflict with the Act. This section, in my opinion, repealed that part of Section 71(1), *supra*, wherein it is provided that the last Federal Decennial Census shall be used as the basis for distribution of the profits of the ABC Board.

In my opinion, by the passage of Act No. 845, *supra*, the Legislature has established a definite proposition of law that all taxes collected by State agencies, which are distributed on a population basis to municipal corporations, should be governed by the provisions of that act, and such distribution should be made on the basis of any such Federal Census taken as therein provided.

You are, therefore, advised that upon the receipt of this opinion all future distributions of profits of the ABC Board to municipalities should be made on the basis of any census taken under the provisions

of Act No. 845, supra, and not on the basis of the last Federal Decennial Census.

I am aware of the fact that since the rendition of your opinion to Mr. Caldwell, under date of February 8, 1965, all distributions have been made to municipalities using the 1960 Census as a basis therefor. Since such distribution was made under the Caldwell opinion, the protection afforded by Title 55, Section 241, Code of Alabama 1940, is available to the ABC Board and its employees.

Very truly yours,

MacDONALD GALLION
Attorney General

April 10, 1968

Miss Berniece H. Centanne
City Clerk
City of Prichard
Prichard, Alabama

Elections — Municipalities — Candidates — Qualifying Fee.

A municipal corporation may not by ordinance set a qualifying fee for candidates in municipal elections.

Opinion by Assistant Attorney General McQueen.

Dear Miss Centanne:

Your request for an official opinion, bearing date of February 13, 1968, is as follows:

"The following is an extract from the minutes of a Special Meeting of the City Council of the City of Prichard held January 13, 1968:

"Motion by Councilman Alford W. Turner and seconded by Councilman J. V. Cochran that a letter be directed to the Attorney General requesting his ruling on the law pertaining to a Municipality setting a qualifying fee for candidates in Municipal Elections, and pointing out that the City of Prichard has adopted an Ordinance providing for a qualifying fee on the basis that, although the Alabama Statute does not provide for qualifying fees in Municipal Elections, neither does the Statute prohibit such action. Motion carried."

My answer to your request is in the negative.

Every qualifying elector of a municipality has a legal and constitutional right to seek municipal office and, in my opinion, the municipality may not by ordinance prescribe or fix a qualifying fee for the enjoyment of this right and privilege. In other words, a municipal-

ity may not charge a fee for a person to seek and be elected to a public municipal office.

Aside from the above, the elections of the City of Prichard are conducted under the provisions of Act No. 663, Regular Session of the 1961 Legislature. Section 6 thereof provides that the mayor shall cause to be printed upon the ballot the names of all candidates who have been put in nomination by any caucus, convention, mass meeting, primary election or other assembly of any political party or political faction in the municipality, and also he shall cause to be printed on the ballots the name of any qualified elector who has filed a statement of candidacy as therein required.

As stated hereinabove, every qualified citizen and elector of a municipality has a statutory and constitutional right to seek public office and, in my opinion, the municipality may not infringe upon this right by charging a fee therefor.

What has been said hereinabove has no application to primary elections and only applies to general municipal elections.

Yours very truly,

MacDONALD GALLION
Attorney General

April 10, 1968

Honorable Glenn O. DeShields
Tax Assessor
DeKalb County
Fort Payne, Alabama

City of Fort Payne — Taxation — Special School Tax.

Under the provisions of Act No. 282, Regular Session of the Legislature of 1967, proposing an amendment to the Constitution authorizing the levying of school tax for Fort Payne one voting place may be designated for election on question of levying of tax.

Opinion by Assistant Attorney General McQueen.

Dear Sir:

Your request for an official opinion, bearing date of April 2, 1968, is as follows:

"Please be advised that the City of Fort Payne, Alabama, has set an election to be held under a recent enabling act for the levying of a seven mill tax, for school purposes.

"In setting up the election provisions were made for only one voting place.

"In that Title 37, requires each city or town be divided into wards or precincts, and that this has not been done in the

City of Fort Payne, Alabama, and the fact that Fort Payne, has always in the past used the same voting wards (previously eight, but with the expansion of the city limits this would be a greater number) as those used in county and state elections.

"My responsibility will be to assess these taxes if voted in; therefore, I am concerned that the validity of this tax may be contested in the courts under Title 37, Section 34(6), Alabama Code of 1958, as Recompiled, if the electors do not vote in their respective wards.

"I am requesting an opinion from you concerning the validity of all electors voting in one box, when the practice has been to vote in numerous established voting places within the city.

"Further, the problem of physically accommodating all of the electors in one box may arise, in that the population within the city limits is in excess of 10,000."

The tax referred to by you in your request was authorized by a constitutional amendment proposed by Act No. 282, Regular Session of the Legislature 1967.

This amendment was passed by the voters of the State and proclaimed to be part of the Constitution of Alabama by proclamation of the Governor dated December 13, 1967.

This amendment authorizes the City of Fort Payne to levy and collect a special school tax not to exceed 7½ mills on each dollar's worth of taxable property in the City of Fort Payne, after the levy of such tax has been approved by the majority vote of the qualified voters of the city at an election called for that purpose.

This amendment further provides that elections for the purpose of ascertaining whether or not such tax may be levied shall be held in the manner provided for election on school district tax as authorized by Title 52, Chapter 10, Article 7, Code of Alabama 1940.

You raise objection as to the validity of this tax on the ground that only one voting place has been established for the election held under said act. You cite as your authority for this objection Section 6 of an act of the Legislature 1945, page 699, which you cite as Title 37, Section 34(6), Code of Alabama 1940 as Recompiled. This section deals with general municipal elections.

The election authorized by the constitutional amendment here considered is not a general municipal election, but on the contrary it is a special election authorized to be held under the constitutional amendment hereinabove referred to.

As pointed out hereinabove, the election held under the amendment shall be held in accordance with Title 52, Chapter 10, Article 7, Code of Alabama 1940.

Section 258 of Title 52, Code of Alabama 1940, which is a part of Article 7, Chapter 10, Code of Alabama 1940, provides that in the event such election is called and held for the purpose of levying school taxes, the judge of probate may designate special voting places within the tax district where votes may be cast.

You are, therefore, advised that if the probate judge has designated one voting place within the City of Fort Payne for the casting of votes in the special election here considered, he has done so in compliance with Section 258, supra, and it is legal in all respects.

Yours very truly,

MacDONALD GALLION
Attorney General

April 17, 1968

Mr. W. S. Hart
County Treasurer of Jefferson County
203 Courthouse Building
Birmingham, Alabama

Jefferson County — Compensation — Counties — Pensions
— Salaries.

If a person satisfies the requirements of Acts establishing a pension system for Jefferson County officers and employees by making a contribution to the pension system fund in order to convert "unpaid membership time" to "paid membership time," the disbursement of money from the County's General Fund to match such contribution would not constitute an increase in compensation to such person in contravention of certain constitutional provisions.

Opinion by Assistant Attorney General Hall.

Dear Mr. Hart:

Your request for an official opinion bearing date of April 3, 1968, is as follows:

"Important constitutional or legal questions have arisen in connection with Act No. 497 of the Regular Session of the Legislature of Alabama of 1965, approved August 20, 1965, which Act establishes a pension system for officers and employees of Jefferson County and with Act No. 408 of the Regular Session of said legislature in its regular session in 1967, approved September 7, 1967, which amends said 1965 act.

"Your official opinion is requested as to the following questions:

"Is said Act violative of Section 68 of the Constitution of the

State of Alabama of 1901 (as modified by Amendments 2, 25 and 92) in that it is an attempt by the Legislature of Alabama to grant to the County of Jefferson the power to increase the compensation of public officers of said county, after service has been rendered by said official?

"More particularly, is the County Treasurer authorized and empowered to disburse money from the county's General Fund to match a contribution from a public official, who was appointed as of April 1, 1965, to fill an unexpired term which ended January 16, 1967, and who was elected to succeed himself for a four year term running from January 16, 1967, said contribution having been made by said official to convert 13 years service from April 1940 to May 1953, to the City of Birmingham, Alabama, from 'unpaid membership time' to 'paid membership time'?

"Is said Act, as amended, violative of Amendment No. 92 of the Constitution of the State of Alabama in that it is an attempt by the legislature to grant to the County of Jefferson the power to increase the compensation of public officers who are appointed or elected for a fixed term, during the term for which they are appointed or elected?

"More particularly, is the County Treasurer authorized or empowered to disburse money from the county's General Fund to match a contribution by a county officer who was appointed as of April 1, 1965, to fill an unexpired term which ended January 16, 1967, and who was elected to succeed himself for a four year term running from said expiration date, said contribution having been made to convert 13 years of 'unpaid membership time' to 13 years of 'paid membership time' where such conversion would, by reason of the fact that such officer was over sixty years of age on the date said contribution was tendered, cause said officer to become eligible to retire immediately or to elect, at that time, to take the right of survivorship provided in the act?

"You are requested to give full force and effect to any constitutional or statutory provisions having any bearing on the subject matter. Particular attention is called to Subsections 1 (i), 2 (h) and 2 (h) 2, of Act 408 supra."

I regret to have to inform you that the Attorney General has no authority to pass on the constitutionality of Acts of the Legislature, since that is a matter for decision by courts of competent jurisdiction. The Attorney General can only express his opinion, which opinion is not binding on the courts.

With that in mind, it is my opinion that if a person satisfies the requirements of the Acts in question by making a contribution to the

pension system fund of Jefferson County in order to convert "unpaid membership time" to "paid membership time," the disbursement of money from the County's General Fund to match such contribution would not constitute an increase in compensation to such person in contravention of Sections 68 and 281 of the Constitution of Alabama 1901 (as modified by Amendments 2, 25, and 92), since such person is not thereby being paid additional compensation for services rendered, but is merely being allowed to avail himself of the benefits of the pension plan.

Very truly yours,

MacDONALD GALLION
Attorney General

May 16, 1968

Honorable Albert P. Brewer
Governor, State of Alabama
C A P I T O L

Officers — Employees — Bonds — Governor.

The Governor of the State of Alabama is authorized to approve the cancellation of the official bond of a State officer or employee when the statutory procedure has been complied with.

Opinion by Assistant Attorney General Turner.

Dear Governor Brewer:

The following is a request for an official opinion of this office by your predecessor, dated April 14, 1968:

"From time to time, I am called upon to approve the cancellation of official bonds of State officers and employees, and I desire your official opinion on the following question:

"(1) Do I, as Governor, have the authority to approve the cancellation of an official bond on a State officer or employee?"

"(2) Am I required by State law or otherwise to approve such cancellations of an official bond on a State officer or employee?"

It is my opinion that the Governor does have the authority to approve the cancellation of an official bond on a State officer or employee when the provisions set out in Title 41, Sections 123 through 131, Code of Alabama 1940, as Recompiled 1958, have been met and when the correct procedure is followed, the cancellation is automatic and the Governor's approval is a ministerial duty only.

Title 41, Sections 123 through 131, Code of Alabama 1940, as Recompiled 1958, specifically set out the procedure which a surety must

follow to discharge himself of his liability on an official bond of a State officer or employee.

These Sections provide that the surety must make his application in writing setting forth facts to show that he is in danger of being made liable on the bond and has no adequate remedy against his principal in consequence of his inability to discharge such liability.

This application must be addressed to the official who is required to approve the bond and must be sworn to.

Title 41, Section 115, Code of Alabama 1940, as Recompiled 1958, as amended 1961, sets out a rather lengthy list of State officers, agents and employees, who must have their performance bond approved by the Governor.

Application for the discharge of the surety on any of these bonds must be addressed to the Governor. There may be other agents, officers or employees who must also have their official bond approved by the Governor. This will appear in the statute requiring a performance bond of the particular agent, officer or employee and in this case application for discharge of the surety on the bond would also have to be addressed to the Governor.

Title 41, Section 128, *supra*, provides that after the statutory procedure has been followed and on the execution, approval, and filing of the required additional bond the applicants are discharged as sureties on the bond upon which such application was made from all liability for any breach of the condition therein contained accruing subsequently to the filing of such additional bond. It, therefore, appears that the termination of liability is automatic and the approval of the Governor at this stage would not be necessary.

In view of the above, my answer to both your questions is in the affirmative, subject to the limitations stated therein.

Very truly yours,

MacDONALD GALLION
Attorney General

May 21, 1968

Mr. G. W. Tobias
Chief Examiner

Department of Examiners of Public Accounts
State Capitol
Montgomery, Alabama 36104

Colleges and Universities — Schools — State Board of
Education — State Superintendent of Education —
Appropriations — Funds.

State Junior College is not authorized to pay out of its funds, whether appropriated or otherwise, for membership in, dues or pledges to civic organizations.

Opinion by Assistant Attorney General Hall.

Dear Mr. Tobias:

Your request for an official opinion bearing date of April 22, 1968, is as follows:

"I request your opinion as to whether a state junior college or trade school may expend funds for membership in civic organizations such as the Chamber of Commerce, Rotary Club, and Birmingham Festival of Arts Association.

"In this regard, I am attaching a copy of a letter of explanation for such membership from Mr. L. M. Sims, Business Manager-Treasurer, Jefferson State Junior College, together with a copy of a schedule of expenditures for such membership found during the course of our current examination of this school."

In the copy of the letter of April 16, 1968, addressed to you, from Mr. L. M. Sims, Business Manager-Treasurer, Jefferson State Junior College, it appears that Jefferson State Junior College has taken out memberships and paid dues and pledges to certain organizations such as the Birmingham Area Chamber of Commerce, the Center Point Chamber of Commerce, the Eastern Area Chamber of Commerce, the Tarrant Chamber of Commerce, the Tarrant Rotary Club, the Birmingham Festival of Arts Association, and the Downtown Action Committee of Birmingham.

As you know, the State Board of Education has the responsibility for operating and maintaining the various State Junior Colleges under the provisions of Title 52, Section 509(96), Code of Alabama 1940 (Recompiled 1958).

Although this section of the Code provides, among other things, that the State Board of Education, upon recommendation of the State Superintendent of Education, shall "disseminate information concerning and promote interest in such additional educational institutions among the pupils of public schools," I find nothing in this section or in any other statute which authorizes a State Junior College to pay out of its funds, whether appropriated or otherwise, for membership in, dues or pledges to such civic organizations as are enumerated in your letter and in the letter to you from Mr. Sims.

Therefore, it is my opinion that these payments were unauthorized by any provision of law.

Very truly yours,
MacDONALD GALLION
Attorney General

May 23, 1968

Honorable T. C. Almon
Judge of Probate
Morgan County
Decatur, Alabama 15601

Notary Public — Justice of the Peace — Officers and Offices — Governor.

Term of office of Notary Public ex officio Justice of the Peace appointed by late Governor did not end at death of Governor but extends to end of term for which late Governor was elected unless sooner removed or office is vacated.

Opinion by Assistant Attorney General Hall.

Dear Judge Almon:

Your request for an official opinion bearing date of May 17, 1968, is as follows:

"There are two Notaries Public Ex-Officio Justice of Peace here in Decatur, who were appointed by the late Governor Lurleen Wallace.

"As I understand their appointment is for the term of the Governor which makes the appointment.

"Would you please advise me if their appointments are still good, or would they have to be re-appointed by the present Governor, Honorable Albert Brewer."

Title 40, Section 15, Code of Alabama 1940 (Recompiled 1958), provides as follows:

"The governor may appoint one notary public for each election precinct in counties, and one for each ward in cities of over five thousand inhabitants, who, in addition to the powers of notary, as defined by law, shall have and exercise the same jurisdiction, and the same powers, as justices of the peace, within the precinct or ward for which he is appointed; and shall hold office for the term of four years from the first Monday after the second Tuesday in January, 1911, and every four years thereafter."

In the case of **William v. State**, 23 Ala. App. 365, 125 So. 690, at Page 692, the Court of Appeals of Alabama said:

"Under our construction of the statute (Code 1923, Section 2951), the term of office of all notaries public and ex officio justices of the peace end and their commissions expire (unless sooner removed) automatically with that of the governor who appointed them."

In an opinion reported in Biennial Report of Attorney General, 1928-1930, at Page 133, the Attorney General held that this section provides that a Notary Public with the powers of Justice of the Peace has a fixed term of office.

In another opinion reported in Biennial Report of Attorney General, 1934-1936, at Page 63, it was held that the term of office of a Notary Public ex officio Justice of the Peace expires concurrently with the term of the Governor who appointed him. To the same effect is an opinion reported in Biennial Report of Attorney General, 1934-1936, at Page 106.

Section 127, Constitution of Alabama 1901, provides that "in case of the Governor's removal from office, death or resignation, the Lieutenant Governor shall become Governor."

In view of the above-cited statutory and constitutional provisions and opinions, and in view of the fact that the present Governor, Honorable Albert P. Brewer, succeeded to office to fill the unexpired term of the late Governor Lurleen B. Wallace, it is my opinion that the terms of office of the two Notaries Public ex officio Justices of the Peace will not expire until the first Monday after the second Tuesday in January, 1971, unless sooner removed by the Governor under the provisions of Title 40, Section 16, Code of Alabama 1940 (Recompiled 1958), or unless they vacate the office pursuant to the provisions of Title 40, Section 17, Code of Alabama 1940 (Recompiled 1958), or unless judicially removed.

Very truly yours,

MacDONALD GALLION
Attorney General

May 27, 1968

Honorable G. W. Tobias
Chief Examiner of Public Accounts
State of Alabama
Montgomery, Alabama

Cost and Fees — Opinions Overruled, Modified or Distinguished — Rewards — Sheriffs.

1. Payments authorized under provisions of Title 29, Sections 102 and 134, Code of Alabama 1940, Recompiled 1958, are not fees, commissions, allowances or other compensation provided by law but are rewards and, as such, may be kept by a sheriff on salary.
2. Opinion of the Attorney General reported in Quarterly Report of Attorney General, Volume 30, page 102, over-

ruled. Informal opinion of the Attorney General to Honorable John W. Snider, dated January 23, 1958, overruled in part.

Opinion by Assistant Attorney General Webb.

Dear Sir:

I have your letter of May 16, 1968 in which you request my opinion as follows:

"In a recent informal opinion of your office to Honorable John W. Snider, Circuit Clerk of Tuscaloosa County, dated January 23, 1968, you held that the Sheriff of Tuscaloosa County, Alabama, being on a salary basis was not entitled to the rewards or fees authorized under the provisions of Sections 102 and 134 of Title 29, Code of Alabama, Recompiled 1958. Quarterly Report of Attorney General, Volume 30, page 102, was cited as the authority.

"Please review this opinion in light of the opinion of the Attorney General in Quarterly Report of Attorney General, Volume 46, page 41, and advise me whether or not the opinion to Honorable John W. Snider is correct."

In the informal opinion to Honorable John W. Snider, Circuit Clerk, Tuscaloosa County, under date of January 23, 1968, two questions were presented for opinion of this office. The first referred to whether or not the Sheriff or any Deputy Sheriff of Tuscaloosa County would be entitled to the money paid under Section 129 of Title 29, Code of Alabama 1940, Recompiled 1958; in view of the fact that such officers are on salary. The opinion held that the Sheriff would not be entitled to this payment on authority of **Jefferson v. Dockerty**, 249 Ala. 196, 30 So. 2d 474. The second question and the one pertinent to your inquiry referred to whether or not the Sheriff would be entitled to retain the payments made under the provisions of Sections 102 and 134 of Title 29, supra. The opinion held that the Sheriff would not be entitled to these payments on authority of Quarterly Report of Attorney General, Volume 30, page 102. It is this question that is the subject of your inquiry.

In Quarterly Report of Attorney General, Volume 46, page 41, cited by you, this office held:

"In **Dallas County v. Kennedy**, 246 Ala. 558, 21, so. 2d. 678, it was held that payments or 'rewards' made to 'the sheriff or other officer or person' for furnishing evidence and obtaining convictions pursuant to Code 1940, Tit. 29, Section 102, were not fees, commissions, allowances or other compensation provided by law and required to be covered into the county treasury under Constitutional Amendment XLVI, and that such rewards might therefore be kept by the sheriff in addition to salary.

“The nature of such payments or ‘rewards’ was considered also in **Mosely v. Kennedy**, 245 Ala. 448, 17 So. 2d 536, and a distinction was drawn as between them and other forms of compensation to the sheriff such as fees. It was said that payments under Title 29, Section 102, *supra*, were rewards ‘to spur individual initiative and diligence, **whether the individual acts in an official or private capacity.**’ (Emphasis added.) See also **Quarterly Report of Attorney General**, Vol. 36, p. 23.”

The opinion reported in **Quarterly Report of Attorney General**, Volume 30, page 102, cited as authority for the opinion to Mr. Snider, was addressed to Honorable J. E. Kennedy, Sheriff of Dallas County, and dated March 10, 1943. In this opinion, the Attorney General held that a Sheriff being on salary was not entitled to the informer's fee provided for under Title 29, Sections 102 and 134 of the Code, *supra*. Thereafter, Sheriff Kennedy filed suit for declaratory judgment against the county to determine his rights to retain amounts previously paid him under Title 29, Section 102 for rewards. The Supreme Court of Alabama, in the case of **Dallas County v. Kennedy**, 246 Ala. 558, 21 So. 2d 678, decided the case in favor of Sheriff Kennedy, thus overruling the opinion of the Attorney General reported in **Quarterly Report of Attorney General**, Volume 30, page 102.

Though the opinion of the court in the **Kennedy** case, *supra*, referred only to Title 29, Section 102, *supra*, I am of the opinion that the holding is equally applicable to payments made under Title 29, Section 134. The two sections are worded very similarly in allowing a reward to the person or persons furnishing information in cases involving unlawful distilling or manufacturing of alcoholic beverages and in cases involving possession of distilling or manufacturing equipment.

My opinion to Honorable John W. Snider, *supra*, is, therefore, withdrawn insofar as the same pertains to payments made under the provisions of Sections 102 and 134 of Title 29, *supra*. The holding in **Quarterly Report of Attorney General**, Volume 30, page 102, is hereby overruled insofar as the same pertains to payments made under these two sections.

Very truly yours,

MacDONALD GALLION
Attorney General

May 29, 1968

Honorable Richard Dominick
State Senator
927 Brown-Marx Building
Birmingham, Alabama 35203

Fireworks — Criminal Law — Words and Phrases.

Title 14, Sections 125(5), 125(7) Code of Alabama 1940, Recompiled 1958 (Act No. 391, Acts of Alabama, approved September 9, 1955), as amended by Act No. 736, Acts of Alabama 1967, approved September 8, 1967, defining illegal fireworks and providing for certain exemptions, discussed generally.

Opinion by Deputy Attorney General Bookout.

Dear Senator Dominick:

Your request for an official opinion bearing date of May 14, 1968 is as follows:

"1. Do you agree that all fireworks have now been outlawed, except toy pistol caps and other devices mentioned in Section 125(5) and sparklers and dipped sticks mentioned in Section 125(7), Title 14?

"2. What is the definition of 'other devices' used in Section 125(5)?

"3. Do you agree that Section 125(7) permits only the sale of sparklers and dipped sticks?

"4. What is the legal definition of a sparkler?

"5. What is the legal definition of a dipped stick?"

I shall number my answers to correspond to each of your questions set out hereinabove.

1. Pursuant to Title 14, Section 125(5), Code of Alabama 1940, Recompiled 1958, (Act No. 391, Acts of Alabama 1955), all fireworks have been outlawed except the following items:

- a. Pistol caps containing twenty-five hundredths grains or less of explosive compound,
- b. Toy pistols, toy canes, toy guns, or
- c. Other devices in which paper caps containing twenty-five hundredths grains or less of explosive compound are used, providing they are so constructed that the hand cannot come in contact with the cap when in place for the explosion.

Section 3 of Act No. 736, Acts of Alabama 1967 likewise excludes from the prohibition against fireworks, ". . . the possession, sale, disposal or use of sparklers and dipped sticks, when the total pyrotechnic composition does not exceed one hundred (100) grains each in weight and when the pyrotechnic composition, containing any chlorate and perchlorate, does not exceed five (5) grams."

2. I am unable to give a definition more precise than that given by the Legislature for "other devices" in Section 125(5), supra. I can

only assume the Legislature intended to exclude from the prohibition against fireworks, all devices in which paper caps containing twenty-five hundredths grains or less of explosive compound are used. The only description of those devices given in the law is that they must be so constructed that the hand cannot come in contact with the cap when in place for the explosion. Therefore, if a device meets the explosive content limitation and is constructed so the hand cannot come in contact with the cap when in place for the explosion, such a device would be legal in Alabama.

3. Other than those items excluded under Sections 125(5), *supra*, Section 125(7), *supra*, would permit only the sale of sparklers and dipped sticks not exceeding the pyrotechnic composition specified in that Section.

4. I am unable to find a legal definition for the term "sparkler". It might be noted that the Legislature has failed to define the term "sparkler" or "dipped stick". The only elaboration in this regard by the Legislature was the inclusion of the limitation as to pyrotechnic composition. Although there is no legal definition for a sparkler, it has certain characteristics by which it is commonly known. It is commonly recognized as being a pyrotechnic device constructed on a wire of approximately eight to twelve inches in length, with from one-half to two-thirds of the wire length coated with a pyrotechnic compound which, when ignited, produces a flowing heat and emits glowing particles in the form of sparks.

5. I, likewise, am unable to find a legal definition for the term "dipped stick". The Legislature has placed a limitation on the pyrotechnic composition of a dipped stick, but has failed to give any definition or description of such an item in the law. Like a sparkler, a dipped stick has certain characteristics by which it is known. It is commonly recognized as being similar to a sparkler with the exception that it is usually composed of a pyrotechnic coating over a portion of a thin wooden stick rather than a wire. When ignited it burns with intense glowing heat but does not emit sparks. The color of the dipped stick can be controlled according to its chemical coating.

The testing of fireworks as to their explosive or pyrotechnic composition is handled by the State Fire Marshal and/or the State Toxicologist. Those items which exceed the limits specified in the fireworks law, as defined by this opinion, are illegal for sale and possession in Alabama. If such items are being sold in this State, the law enforcement agencies of the state, counties, and municipalities have ample authority to make arrest.

Former opinions of this office inconsistent with this opinion are expressly overruled.

The foregoing conclusions in this opinion are advisory only and we have no way to force compliance or to prohibit failure to comply

with opinions of this office. The only precise way to obtain a final determination as to the meaning of the fireworks law is for a court of competent jurisdiction to make that determination.

Sincerely yours,

MacDONALD GALLION
Attorney General

May 29, 1968

Mr. Ruben K. King, Commissioner
State Department of Pensions and Security
Administrative Building
64 North Union Street
Montgomery, Alabama

Pensions and Security, Dept. of — Industrial Relations,
Dept. of — Work Incentive Program.

The State Department of Pensions and Security has authority to proceed with the implementation of the Work Incentive Program established by the 1967 Social Security Amendments.

Opinion by Assistant Attorney General Mary Lee Stapp.

Dear Mr. King:

Your request for a formal opinion is as follows:

"The recent Social Security Amendments require the States to establish a Work Incentive Program for recipients of aid to dependent children who are appropriate for referral to such program. The Federal law further provides that the Work Incentive Program must be implemented by the States by July 1, 1968, unless prohibited by State law and in that event, must become effective not later than July 1, 1969. The purpose of the Work Incentive Program is stated to be the utilizing of all available manpower services under which individuals receiving aid to dependent children will be furnished incentives, opportunities, and necessary services for employment in the regular economy, training for work in the regular economy and participation in special projects in an attempt to bring these recipients to independence and useful roles in their communities.

"The Federal law sets out specific responsibilities of the single State agency administering the public assistance titles of the Social Security Act and the U. S. Department of Labor which in turn will work through the Employment Service of the State Department of Industrial Relations in Alabama in carry-

ing out the Work Incentive Program. The Department of Pensions and Security will refer to the Employment Service ADC recipients 16 years of age or over who are found to be appropriate for referral. The Employment Service will accept persons so referred, classify them for work and/or training, and develop work and/or training programs for them. The classifications are (1) those who will be found ready to go into the regular labor force; (2) those who will be provided training with the ultimate plan of entering the regular labor force; and (3) those who will need more intensive help in increasing their earning capacity and will be placed on special work projects developed by the Employment Service for that purpose. It appears at this time that the Federal Amendment has been interpreted to require States to include all three groups in its initial plan.

"None of the persons enrolled in the Work Incentive Program and placed on projects will receive less than they were entitled to under the aid to dependent children program. In group one, as referred to above, if the earnings are not enough to meet the family needs by agency standards including an allowance for work expenses, ADC will continue based on unmet need as for any other ADC case. In group two the ADC payment will continue and in addition up to \$30 a month may be paid to the individual by the Employment Service as an incentive payment. Those in group three will receive their ADC payments in the form of wages paid by the employer. The amount of the ADC grant, however, will be transferred by the Department of Pensions and Security to the Employment Service and in turn to the employer as part of the wages to be paid the employee. In each of the three types of situations, the ADC recipients would continue receiving aid on the regular basis until placed at work and/or training or on a special project by the Employment Service if otherwise eligible.

"It is our understanding that the Federal law does not contain any provision which would prohibit the establishment of a Work Incentive Program on a Statewide basis. It appears there is no prohibition against provision for transportation, or with the consent of the individuals, moving people to locations where programs are operated. Since only approximately 750 'work slots' will be allotted Alabama in the initial stage, it is anticipated that the Employment Service will concentrate its efforts in areas having a larger number of ADC cases. Although the State Department of Pensions and Security will be obligated to assure 20 per cent of the cost of any projects developed under the Work Incentive Program, to provide medical examinations and transportation, etc., for those persons referred to such projects, it is not expected that ADC recipients in areas not initially covered by the program would be adversely affected.

"Will you please advise us whether the Alabama Department of Pensions and Security has legal authority to proceed with the implementation of the Work Incentive Program as of July 1, 1968. If there are legal barriers, will you please advise us of the necessary changes in our present laws to comply with this Federal requirement, contained in the recent amendments to the Social Security Act, by July 1, 1969."

You have asked whether the Alabama Department of Pensions and Security has authority to proceed with the implementation of the Work Incentive Program established by Section 204, Part I of Title II of the 1967 Social Security Amendments, amending Title IV of the Social Security Act (81 Stat. 884) (P. L. 90-248). You indicate that this program is mandatory as of July 1, 1968, if there are no legal barriers.

It appears that the two questions which need to be resolved are: (1) whether the fact that the program initially will begin only in certain parts of the State would prevent the State under its present statutory scheme from entering the program and (2) whether it is possible under the present statutory scheme to transfer funds to the Employment Service Division of the Department of Industrial Relations to effectuate the purposes of the work incentive amendments.

I do not think that the fact that the program would begin only in certain parts of the State would prevent the Department from entering the program. It is clear that the persons who will be chosen for the Work Incentive Program will continue to be paid at a rate not less than other recipients similarly situated.

It is also clear that the Secretary of Labor does have authority to make the program statewide, which can be done after effective administrative techniques are worked out for the accomplishment of the purposes of the 1967 amendments. To hold otherwise would be to ignore the purposes of law as set out in Title 49, Section 17 (7), Subsection 5 of the Code of Alabama 1940, Recompiled 1958, which places upon the Department the duty and responsibility to administer or supervise all forms of public assistance and to act as the agent of the Federal Government in welfare matters of mutual concern The office of the Attorney General in all questions posed by your Department to our office has given broad interpretation to this statutory requirement. It has been held that your State Department does have the authority to meet Federal standards which may be established for the administration of State and Federal funds (See Quarterly Report of Attorney General, Volume 129, page 18; Quarterly Report of Attorney General, Volume 111, page 55; and Quarterly Report of Attorney General Volume 60, page 147).

Since this is the beginning of a new program, it does appear that the plan developed should be approved by the State Board in conformity with the provisions of Title 49, Section 17 (6), *supra*, which provides in pertinent part as follows:

"In determining the relative welfare needs in the several counties consideration shall be given to the number of persons eligible to receive public assistance, the financial needs of those eligible persons, and the cost of administration and services. **All these factors shall be determined in accordance with uniform standards set by the state department, subject to the approval of the state board, which standards shall in no case contravene the Social Security Act and the rules and regulations promulgated thereunder.**" (Emphasis supplied.)

The second question may be answered in the affirmative since it is clear that all of the statutes authorizing public assistance payments, including aid to dependent children, permit payments on behalf of persons and the State law specifies that a dependent child is the same as defined in the Social Security Act. The grantee relative receives the payment in aid to dependent children (Title 49, Section 17 (14), Code of Alabama 1940, Recompiled 1958). It, therefore, would appear that this type of payment to another state agency would be just as permissible as a payment to a private nursing home on behalf of a public assistance recipient in need of nursing home care.

I can find no statutory objections to the Department entering into contractual agreements with the Employment Service Division of the Department of Industrial Relations which could also be considered as assisting other departments, agencies, and institutions of the State to carry out the services in conformity with the provisions of the State Department (Title 49, Section 17 (7), Subsection 4, Code of Alabama 1940, Recompiled 1958). It is clear that the 1967 amendments to the Social Security Act now make this one of the purposes of your Department. Since your Department has been designated as the single state agency to carry out the purposes of Title IV of the Social Security Act, it would be unlikely that courts would construe the statutory language in Title 49, Section 17 (2) et seq., in a manner which would defeat the purpose for which the statute was enacted.

Yours very truly,

MacDONALD GALLION
ATTORNEY GENERAL

May 30, 1968

Honorable A. A. Clemens
Superintendent
Board of Education
Jackson County
Scottsboro, Alabama 35768

County Boards of Education - Expenses

County Board of Education has no authority to advance money for officers or employees to cover expenses.

Opinion by Assistant Attorney General Webb.

Dear Mr. Clemens:

Your request for an official opinion bearing date of May 2, 1968 is as follows:

"Since there is an increase in the number of trips school personnel and board members have taken in the past few months, a question has arisen whether or not it is legal to advance the money before the trip and submit a statement of paid expenses after the trip.

"An opinion on this would be greatly appreciated."

In my opinion, there is no authority for advancing such expense funds for any purpose unless specifically authorized by the Legislature. Title 41, Section 157, et seq., Code of Alabama 1940, Recompiled 1958, does grant authority to the county and municipal governing bodies to advance expenses to employees and officers of such governing bodies. However, this authority, in my opinion, would not extend to officers and employees of the Board of Education.

All public funds should be strictly accounted for and paid only in the manner prescribed by law.

Very truly yours,

MacDONALD GALLION
ATTORNEY GENERAL

May 30, 1968

Honorable W. F. Lee, Jr.

Chairman

Court of County Commissioners

Lawrence County

Moulton, Alabama 35650

Counties - Employment - Employers and Employees - Insurance.

County may continue allowing former county employees no longer on the county payroll to accept benefit of county insurance by paying the cost to the county.

Opinion by Assistant Attorney General McQueen.

Dear Mr. Lee:

Your request for an official opinion, bearing date of April 18, 1968, is as follows:

"We request your opinion on the Lawrence County Court of County Commissioners has a group insurance with Blue Shield Blue Cross of Alabama on county employees. Under this group plan we have some insured who no longer are employed and on county payroll. These insured pay the full amount of the policy into our county insurance fund and we in turn remit for coverage. No county funds are involved.

"1. Is this an illegal act by the governing body when agreeable with insurance agent?"

My answer to your inquiry is in the affirmative.

You state in your request that it is perfectly agreeable with the insurance company to continue covering these former employees under the group insurance policy which your county has with Blue Shield Blue Cross. You further state that no county funds are involved in any way to provide for this coverage for the former employees.

I find no prohibition either statutory or constitutional denying these former employees benefit of the contract which the county has with the company. As a matter of fact, the act authorizing the group hospitalization plan for State employees contains a proviso in Section 7 thereof that the insurance board shall provide by contract for coverage of retired State employees who are no longer actually employed by the State.

In the final analysis, it is a matter of contract between the county and the Blue Cross Blue Shield to continue these former employees under coverage of group policy and a county has full authority to contract for this benefit.

Yours very truly,

MacDONALD GALLION
ATTORNEY GENERAL

May 30, 1968

Honorable David W. Pruett
Chairman

Board of Revenue
Colbert County

Tuscumbia, Alabama 35674

Appropriations - Colbert County - Corporations - Industrial Development.

1. Under the facts presented, Colbert County may appropriate funds to the Colbert Industrial Committee.
2. Counties may make appropriations to corporations organized within the County under the Alabama Non-Profit Corporation Act for industrial purposes.

Opinion by Assistant Attorney General Gish.

Dear Sir:

Your request for an official opinion dated April 17, 1968 is as follows:

"The Board of Revenue of Colbert County, Alabama, has been requested to cooperate with the 'Colbert Industrial Committee,' a non-profit corporation organized under Chapter 10 of Title 10 (Section 203-263) of the Code of Alabama, 1940, as amended, in connection with the building of an industrial park in Colbert County. This non-profit corporation proposes to establish an industrial park, provide the same with sewage, water and other facilities and endeavor to sell lots to the industrial and manufacturing plants.

"The cities of Tuscumbia, Sheffield and Muscle Shoals have likewise been requested to cooperate. The proposal is that the Board of Revenue of Colbert County appropriate \$75,000.00, with a similar amount being appropriated by each of said cities. As industrial sites are sold to manufacturing and industrial plants that one-fourth of the revenue from the sales be transferred from this non-profit corporation back to the Board of Revenue after all expenses have been deducted. A similar amount would be transferred back to each of the cities.

"This industrial park would be located in the County and not within the bounds of any of the cities.

"I would like to inquire of you as to whether or not you consider this proposal to be in keeping with the authority given the Board of Revenue by sub-section 22 of Section 12 of Title 12 of the Code of Alabama, as amended. I would like to inquire of you also as to whether or not you feel that this Colbert Industrial Committee (a non-profit corporation) is such a corporation that can carry out the provisions of said sub-section 22 of said Section 12 of said Title 12."

Title 12, Section 12, Code of Alabama 1940, as amended by Act No. 45, Acts of Alabama 1961, page 1898, authorizes a county governing body to appropriate funds for the purpose of locating and promoting industry within the County, and also authorizes the County to enter into a contract with a corporation for this purpose. Quarterly Report of Attorney General, Volume 113, page 36.

In an opinion reported in Quarterly Report of Attorney General, Volume 126, page 24, we discussed appropriations by counties to a mental health board created under the provisions of the Alabama Non-Profit Corporation Act.

The Colbert Industrial Committee is such a non-profit corporation and, as such, has the authority to establish an industrial park in the

manner set forth in your request. Cf. Quarterly Report of Attorney General, Volume 126, page 24, supra.

Therefore, I am of the opinion that the Colbert County Board of Revenue may make the contemplated appropriation to Colbert Industrial Committee and such corporation may use the funds in the manner proposed by your request.

We trust that this opinion furnishes the desired information.

Very truly yours,

MacDONALD GALLION
ATTORNEY GENERAL

June 4, 1968

Honorable Lee M. Otts
County Attorney
Escambia County
Brewton, Alabama

Costs and Fees - Habeas Corpus - Coram Nobis -
Appeals - Fine and Forfeiture Fund.

1. Costs on habeas corpus and coram nobis proceedings cannot be paid from the Fine and Forfeiture Fund.
2. Fees allowed Circuit Clerk on indigent appeals discussed.

Opinion by Assistant Attorney General Clark.

Dear Mr. Otts:

Your request for an official opinion, bearing date of April 30, 1968, is as follows:

"We have an unusually large number of writs of error coram nobis and habeas corpus proceedings filed in the Circuit Court of Escambia County, due to a certain extent to the fact that Atmore State Prison Farm is located in this county. When the Clerk of the Circuit Court receives these petitions he prepares docket sheets and a file on each case and enters the appropriate orders and decrees thereon. The Clerk has been filing a claim against the fine and forfeiture fund of the county in connection with his services in each case, the claim being usually in the amount of \$8.00. There are 77 such cases which have recently been handled by our court and Escambia County has paid the Clerk of the Circuit Court \$8.00 each for 74 of these and \$10.00 for the other 3. A member of the Department of Examiners of Public Accounts is now making an audit of the office of the Circuit Clerk and he has questioned these claims made by the Clerk. He first stated that he thought the claims should have

been made against the State and then stated that he did not believe that there was any legal basis for payment from any fund. As these cases continue to be filed we need to know if the clerk should receive payment from the county. Please advise us if the Circuit Clerk is entitled to any fees in connection with writs of error coram nobis and habeas corpus proceedings. If so, please specify what fees he is entitled to. In addition to docketing the cause and entering the court's orders he frequently must prepare a transcript of the record. The law provides for execution against the defendant for costs in certain instances, however, this would not help in this situation as all of the defendants are convicts."

Fees allowed to clerks of circuit courts are set out in Title 11, Section 21, Code of Alabama 1940, Recompiled 1958. That section provides, in part, as follows:

"§ 21. Fees allowed to clerks of circuit courts. -- Clerks of circuit courts are entitled to receive the following fees for the services indicated: . . . for filing application for habeas corpus, six dollars; . . . for filing any petition, summons and complaint or proceeding not otherwise provided for herein, ten dollars; . . ."

Habeas corpus and coram nobis are civil proceedings and costs should be collected as in civil cases. If the petitioner is unsuccessful, costs may be taxed against the petitioner and collected from him by execution. Quarterly Report of Attorney General, Vol. 66, page 59.

In most of the cases mentioned in your request, proceedings in habeas corpus or coram nobis will be in forma pauperis and no costs could be collected from such petitioners. Nor can they be paid from the fine and forfeiture fund of the county, such costs not having accrued in a criminal case. Title 15, Section 393, Code of Alabama 1940.

There is presently no way of collecting such costs when the indigent prisoner is unsuccessful and costs are assessed against him.

Should costs be assessed against the State, such costs should be paid from a special appropriation appearing in the current General Appropriations Act. See Act No. 256, General and Local Acts 1967, page 681, E Miscellaneous (11):

"(11) For court costs to be paid by the State of Alabama not otherwise provided for, estimated . . . 50,000.00."

If the court hearing the habeas corpus proceedings taxed costs against the State of Alabama in its judgment, a copy of said judgment, together with the bill of costs should be forwarded to the State Comptroller for payment.

On appeals from denial of habeas corpus or coram nobis, the circuit

clerk is entitled to the fee set by the court pursuant to provisions of Title 15, Section 380 (2), Code of Alabama 1940, as amended.

Yours very truly,

MacDONALD GALLION
ATTORNEY GENERAL

June 10, 1968

Honorable T. J. Lockhart
Sheriff
Chilton County
Clanton, Alabama 35045

Extradition - Prisoners - Habeas Corpus.

1. Waiver of extradition discussed.
2. Warnings given to prisoners before taking confessions discussed.
3. Prisoner may prosecute a writ of habeas corpus after signing waiver of extradition.

Opinion by Assistant Attorney General Clark.

Dear Sir:

Your letter of May 6, 1968, requesting an official opinion of this office, is as follows:

"Our office has recently been confronted with three questions of law relative to the extradition of prisoners held in the Chilton County Jail awaiting extradition from another state on one or more felony charges. We shall appreciate your opinion and answer to the questions as hereafter presented.

"Where a person has been arrested on a warrant from another state and orally expresses the wish or agrees to a waiver of extradition to a formal extradition proceedings, what procedure should be followed by Sheriff's office as to the following:

"(1) Before whom and where should any written 'Waiver of Extradition' be executed?

"(2) What advice must or should be given him as is presently required before the admission of any confession into evidence?

"(3) After a 'Waiver of Extradition' has been properly executed by the prisoner following proper instructions and execution as indicated in the two prior questions, what right is there for the prisoner to avoid his 'Waiver of Extradition' when the authorities from the proper state appear to take him into custody?"

There is no provision in the Code of Alabama setting out before whom and where a written waiver of extradition should be executed.

It would be well to advise the prisoner of his right to counsel prior to his signing such a waiver. There is presently no provision in Alabama for the payment of counsel for indigents at this stage of proceedings. The waiver may be signed in your office.

The advice which must be given to a defendant is set out in **Miranda v. Arizona**, 384 U. S. 436, 86 S. Ct. 1602, 16 L. Ed. 2d 694, as follows:

" . . . He must be warned prior to any questioning that he has the right to remain silent, that anything he says can be used against him in a court of law, that he has the right to the presence of an attorney, and that if he cannot afford an attorney one will be appointed for him prior to any questioning if he so desires. Opportunity to exercise these rights must be afforded to him throughout the interrogation. After such warnings have been given, and such opportunity afforded him, the individual may knowingly and intelligently waive these rights and agree to answer questions or make a statement. But unless and until such warnings and waiver are demonstrated by the prosecution at trial, no evidence obtained as a result of interrogation can be used against him."⁴⁸

"The warning of the right to remain silent must be accompanied by the explanation that anything said can and will be used against the individual in court"

The prisoner has a right to avoid his waiver of extradition when the authorities from the proper state appear to take him into custody. He may prosecute a writ of habeas corpus at that time as provided in Title 15, Section 1, Code of Alabama 1940.

Yours very truly,

MacDONALD GALLION
ATTORNEY GENERAL



June 10, 1968

Honorable Virgil Nolen Price
Superintendent
Tallapoosa County Schools
Dadeville, Alabama

Schools - County Boards of Education -
Taxation - Insurance

County boards of education may pay premiums on group life and hospital insurance for its employees from four-mill county-wide tax or seven and one-half

special mill tax, or minimum program funds if available, if said taxes are voted and levied for public school purposes.

Opinion by Assistant Attorney General Madison.

Dear Sir:

I have your request for an official opinion of this office, dated May 31, 1968, which is as follows:

"The Tallapoosa County Board of Education requests an opinion as follows:

"Does the Tallapoosa County Board of Education have the authority to use Minimum Program funds, County-Wide 4-Mill Tax or 7 1/2 Special Mill Tax funds for the purpose of covering teachers and all other employees of the board with group life and hospital insurance."

County boards of education have authority to provide group life and hospital insurance for their teachers and other employees. Title 28, Section 351 (1-7), Code of Alabama 1940, Recompiled 1958.

The premiums may be paid out of any available funds. Section 351 (3), *supra*.

I assume that all of the taxes mentioned, including the seven and one-half special mill tax, were voted and levied for public school purposes.

So considered, your question is answered in the affirmative. See Biennial Report of Attorney General 1926-28, Page 609.

Yours very truly,

MacDONALD GALLION
ATTORNEY GENERAL

June 25, 1968

Honorable Earl D. James

Mayor

City of Montgomery

City Hall

Montgomery, Alabama

Municipalities - Property - Museums.

1. Under the facts presented, the City of Montgomery may purchase property to be used as a museum site and such property may be developed by the Museum Board of the City of Montgomery.

Opinion by Assistant Attorney General Gish.

Dear Sir:

Your request for an official opinion dated May 23, 1968 is as follows:

"I should like to have your official opinion on the following factual situation and in view of the provisions of the statutes herein mentioned.

"There is available for purchase, within the City of Montgomery, a prime example of ante-bellum construction which the City is desirous of purchasing as an historical site. As you know, municipalities in this state, under the provisions of Title 37, Section 511, may acquire sites to establish and maintain public museums and public art galleries. The City of Montgomery, under the provisions of Act 478, Regular Session, 1961, is authorized to create a Museum Board; said Board is responsible for the direction, supervision and promotion of a museum program within the City; the governing body of the City may appropriate municipal general funds to support the Board and its programs. This act provides further that 'The governing body of such municipality may improve and equip, or appropriate funds to the Board for improving and equipping the lands, buildings, facilities, supplies and equipment for museum purposes by means of purchase, lease, loan, gift or condemnation procedure . . . '

"I also call your attention to the fact that the City has created, under provisions of Act No. 142, 1967 Special Session, an Historic Development Commission, part of the purpose of which is to assist in the preservation and protection of buildings of historic and architectural value, etc. This commission, in its supervisory capacity, has recommended to the City that it purchase this property.

"In addition to the above information, I should like to point out that there has been organized, as a non-profit corporation, the Landmarks Foundation of Montgomery, Inc., and the objectives of this corporation include the promotion and stimulation and appreciation of historical sites and the corporation has the authority to lease real property to promote the objectives and purposes of the corporation.

"Will you please give me your official opinion as to the legality of the City purchasing this property as a museum site, of historical value, with the understanding that the Museum Board of the City of Montgomery would use space in the buildings on the property and would further, in all probability, agree with the Landmarks Foundation of Montgomery, Inc., to assist in the restoration, operation, and development of the site as a means of attracting tourists to the City of Montgomery.

"The Trustees of the Landmarks Foundation of Montgomery, Inc., have orally promised to expend funds of that corporation in the restoration of the buildings on the site and the contract between the Museum Board and the corporation would no doubt include provisions for a mutual occupancy and exploitation of the site.

"I shall appreciate your early attention and reply to this letter since the subject property of purchase may not be on the market for any appreciable length of time."

Act No. 541, Acts of Alabama 1963, page 1159, reads, in part, as follows:

" . . . Each city and town in this state shall have power to acquire sites for, construct or otherwise acquire, and establish and maintain, public cultural facilities consisting of museums, art galleries, art centers, music halls, and related facilities, all to the end of making cultural facilities available to the public whether separately or grouped two or more in the same building. Whenever any such facilities shall have been so established they may be administered by and through such instrumentality or instrumentalities as may be designated for that purpose by the governing body of such city or town'."

You will note that the above-quoted portion of said statute authorizes the administration of museum facilities by instrumentalities designated by the Municipality which owns such facilities.

Therefore, I am of the opinion that Act No. 541, *supra*, authorizes the City of Montgomery to purchase the property to which your request refers and authorizes the Museum Board of the City of Montgomery, created under Act No. 478, Acts of Alabama 1961, page 534, to develop and administer such property in the manner contemplated by your request.

Very truly yours,

MacDONALD GALLION
ATTORNEY GENERAL

June 26, 1968

Honorable Claude B. Wimberley
Clerk

Town of Silas
Silas, Alabama

Elections - Municipalities - Voters.

1. A person otherwise qualified as an elector must have resided within the corporate limits of a municipality for three (3) months immediately preceding an election therein before he can vote in such election.

2 Where territory is annexed to a municipality less than three (3) months before an election therein, the residents of such territory may not vote in such election.

Opinion by Assistant Attorney General Gish.

Dear Sir:

Your request for an official opinion dated June 17, 1968 is as follows:

"The Town Limits of the Town of Silas, Choctaw County, Alabama, has recently been extended to take in additional territory. Said territory was annexed by an election held on May 28, 1968.

"Question:

"1. Are the qualified electors who have resided within the above mentioned territory for 3 months next preceding the election of municipal officers of the Town of Silas on August 13, 1968, eligible to vote in this election?

"2. Are the qualified electors who have resided within the above mentioned territory for one year next preceding the election of municipal officers of the Town of Silas on August 13, 1968 eligible to run for office in this election?"

In an opinion reported in Quarterly Report of Attorney General, Volume 52, page 256, we held that a person otherwise qualified as an elector must have resided within the corporate limits of a municipality for three (3) months immediately preceding an election therein before he can vote in such an election. See Constitution of Alabama 1901, Amendment 207, and Section 18 of Act No. 663, Acts of Alabama 1961, page 827.

For the above reason, I am of the opinion that those residents of the territory to which your request refers will not be qualified to vote in your general election to be held on August 13, 1968, since said territory will not have been a part of the Town of Silas for a period of three (3) months prior to August 13, 1968.

Therefore, both of your questions are answered in the negative.

Very truly yours,

MacDONALD GALLION
ATTORNEY GENERAL

June 28, 1968

Honorable Hoyt B. Hamilton
Judge of Probate and Chairman
St. Clair County
Court of County Commissioners
Ashville, Alabama 35953

Sheriffs - Counties.

Under the authority of Act No. 593, Acts of Alabama 1949, as amended by Act No. 353, Acts of Alabama 1957 (Title 54, Section 27(1), Code of Alabama 1940, Recompiled 1958), the county governing bodies of the several counties of the state are authorized, in their discretion, to purchase distinctive uniforms and to establish a reasonable allowance for cleaning of sheriffs' uniforms on a monthly basis where ownership is retained by the various counties.

Opinion by Assistant Attorney General Tyson.

Dear Sir:

Your request for an official opinion of this office dated May 29, 1968, is as follows:

"Act No. 593 of the Acts of 1949, as amended, *supra*. Also Vol. 104 Attorney General Ruling on the question of the governing body having authority to purchase for the sheriff's department uniforms which letter sets out clearly giving such authority where ownership of such uniform is retained by St. Clair County.

"All personnel in the sheriff's department of St. Clair County is on a fixed salary regulated only by legislative act and any change in compensation is brought about by an act of the Legislature only, and the personnel of the St. Clair County sheriff's department is drawing less compensation than the Chiefs of Police in some of the municipalities in this county.

"It has been called to the attention of the Commissioners Court that during this inflationary period it is costing \$25 to \$30 per month per employee to keep uniforms cleaned and neat.

"Under the above cited authority, would the St. Clair County Commissioners Court have authority to allow each member of the sheriff's department a reasonable allowance for cleaning of uniforms on a monthly basis."

As mentioned above, the county governing bodies of the several counties of the state are authorized, in their discretion, to purchase distinctive uniforms for the use of the sheriff and his deputies for the performance of their duties, ownership being retained by the various

counties. See Volume 104, Quarterly Report of the Attorney General, page 7.

Since such uniforms are reasonably necessary in the proper performance of the sheriffs' duties, clearly a reasonable allowance for the maintenance of such uniforms is within the sound discretion of the governing bodies of the respective counties of the state. Title 54, Section 27 (1), Code of Alabama 1940, Recompiled 1958.

I trust this answers your inquiry.

Very truly yours,

MacDONALD GALLION
ATTORNEY GENERAL

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COLLEGES AND UNIVERSITIES:			
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